COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INQUIRY INTO THE FEASIBILITY OF SET USE FEE FOR TELECOMMUNICATIONS SERVICES IN THE COMMONWEALTH OF KENTUCKY	)))	ADMINISTRATIVE CASE NO. 356

O R D E R

INTRODUCTION

On August 17, 1995, Coin Phone Management Company ("Coin Phone Management") filed a "'Set Use' Fee Petition" requesting the Commission to authorize all independent pay telephone providers ("IPPs") to receive a "set use" fee[1] for all local, intraLATA, and interLATA long-distance 0-/0+[2] revenue producing calls made on Kentucky customer owned, coin-operated telephones ("COCOTs"). The Commission found that Coin Phone Management raised legitimate issues that should be considered and opened this proceeding.

By Order dated October 2, 1995, the Commission notified all providers of telecommunications services in Kentucky of their right to participate in this case. As a result, the following parties requested and were granted intervention: Cincinnati Bell

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1 "Set use" fees are charges, typically $.25 per call, assessed by a local exchange carrier ("LEC") to the end-user and subsequently remitted to the IPP by the LEC. The fee is assessed in those situations where the IPP currently receives no compensation and is not a separate amount to be deposited to use the pay telephone.

2 "0-" calls occur when an end-user dials zero without any following digits, thereby directing the call to the LEC operator. "0+" calls occur when an end-user dials zero followed by the digits of the called telephone number.

Telephone Company, Sprint Communications Company ("Sprint"), MCI Telecommunications Corporation, LDDS WorldCom, GTE South, Frontier Communications International Inc., AT&T Communications of the South Central States, Inc., the Kroger Company, and Lou Bonar. A procedural schedule was adopted on January 4, 1996.

On March 8, 1996, Coin Phone Management Company filed an amendment to its Set Use Fee Petition ("Amendment") to limit the scope of the original petition to request authorization to implement a "set use" fee only for 0-/0+ revenue-producing calls from its payphones in the territory of BellSouth Telecommunications, Inc. ("BellSouth"). On April 5, 1996, Coin Phone Management Company filed a document entitled "Two Motions" explaining that the request in the Amendment refers only to those local and intraLATA calls made from Coin Phone Management payphones in BellSouth territory that are carried and billed by BellSouth. Coin Phone Management states that BellSouth's tariff provides it will bill and collect the "set use" fees for other IPPs.

The Commission granted Coin Phone Management's motion to amend its petition by Order dated April 9, 1996. Coin Phone Management filed a tariff on April 5, 1996, to implement its "set use" fee, as amended, which the Commission suspended on May 2, 1996. Also on May 2, 1996, the Commission granted a motion filed by Sprint to withdraw from this proceeding.

A hearing was held in this matter on April 24, 1996. The only witness for Coin Phone Management prefiling testimony and appearing at the hearing was Albert H. Kramer. Although he did not prefile testimony, Thomas G. Rose also testified at the hearing on behalf of Coin Phone Management. The only intervenor making an appearance at the hearing was the Kroger Company.

BACKGROUND

Coin Phone Management's petition stems from the Commission's Order in Case No. 95-015[3] wherein BellSouth received Commission approval to implement a $.25 "set use" fee for all 0-/0+ local and intraLATA long-distance revenue producing calls from public payphones.

BellSouth defined the "set use" fee as an additional charge of $.25 specifically for using a public or semipublic set to complete a call originating from BellSouth coin telephones. The rate was based on the $.25 charge for a local call placed from a pay telephone and represents the value of the accessibility of the pay telephone to the end-user. The fee was not to be a separate amount to be deposited to use the coin telephone but would appear as a component of total charges for 0+ and 0- local and intraLATA long-distance calls.

Coin Phone Management stated that its "set use" fee would appear as a component of total charges for 0-/0+ local, intraLATA, and interLATA calls. In its initial filing Coin Phone Management acknowledged that LECs would incur costs to make billing system changes necessary to remit "set use" fees to IPPs. Therefore, it also requested that LECs be required to offer billing and collection services at cost plus a fair

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3 Case No. 95-015, The Tariff Filing of South Central Bell Telephone Company to Introduce an Additional Charge Associated with Certain Calls Made From BellSouth Telecommunications Public and Semipublic Calling Stations, Order dated June 16, 1995.

rate of return, and suggested that "set use" fees be applied by LECs as credits on IPPs' existing telephone bills.

The Telecommunications Act of 1996 ("the Act") directs the Federal Communications Commission ("FCC") to promulgate new rules governing the payphone industry.[4] Among other things these rules are to ensure that all payphone owners are compensated for calls originated on their payphones.

On June 6, 1996, a Notice of Proposed Rulemaking ("NOPR") in CC Docket No. 96-128[5] was issued by the FCC, the purpose of which was to propose rules to accomplish the objectives of the Act including fair compensation. One of the approaches to the compensation issue is the establishment of a "set use" fee, similar to the "set use" fee being requested in this case. Regulations regarding the provision of payphone service and fair compensation are to be prescribed by the FCC no later than early November 1996.

DISCUSSION

Federal Dial-Around Compensation Plan

The Federal Dial-Around Compensation Plan was first imposed by a 1992 Order of the FCC. This plan applies to interstate calls whereby the user makes the election to dial-around the carrier that is presubscribed to the telephone.[6] The Commission, through discovery and cross-examination, expressed concern that the "set use" fee might

4 Section 276, "Provision of Payphone Service."

5 CC Docket 96-128, Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996.

6 Transcript of Evidence from April 24, 1996 hearing ("T.E."), at 16 - 17.

be a double recovery of costs already being recovered by Coin Phone Management through dial-around compensation. Coin Phone Management presented testimony maintaining that the "set use" fee would not be a double recovery in that it differs from the dial-around compensation in three ways. First, dial-around compensation applies only to interstate calls. Second, the dial-around plan relates to calls initiated to an access code at the election of the user. Third, the dial-around compensation plan is a charge imposed on the carrier to be paid to the IPP and the carrier can elect to collect or not collect it from the end-user. In contrast, the "set use" fee is billed directly to the end-user.[7]

Cost Recovery/Justification

One of the reasons cited by Coin Phone Management for establishing a "set use" fee was to recover its investments and costs.[8] Coin Phone Management states that a very large percentage of the costs associated with operating a payphone are fixed and that all the costs of providing a payphone should be recovered from the users of that payphone.[9] Coin Phone Management claims that a portion of these costs are not currently being recovered and would be recovered through the implementation of a "set use" fee. The Commission has attempted to determine whether Coin Phone Management has unrecovered costs. However, no evidence was offered to support those unrecovered costs. Coin Phone Management argues that every user initiating a

7 T.E. at 16 - 18.

8 Coin Phone Management's Response to the Commission's January 4, 1996 Information Order, Item 1.

9 Prefiled Testimony of Albert H. Kramer, page 5.

call from a payphone should contribute to the cost recovery of that payphone to avoid subsidization by some users for other users.[10] Accordingly, users making local, intraLATA, and interLATA long-distance 0-/0+ revenue producing calls should pay a portion of the cost of that payphone. The federal dial-around compensation plan does not provide a means for recovering the cost from those users.

Coin Phone Management did not provide cost justification for the proposed "set use" fee of $.25. However, Coin Phone Management argues that the normal standards of proof should not be required in this instance because the Commission has already approved the fee for a telephone company and, in doing so, determined that this is a reasonable charge.[11]

Revenue Neutrality

In Case No. 95-015, the Commission approved BellSouth's "set use" fee in part because BellSouth stated that the additional revenue generated by the proposal would be offset by a reduction in toll and access charges, resulting in a revenue neutral affect. Testimony was presented concerning whether the issue of revenue neutrality should impact the Commission's determination on the authorization of Coin Phone Management to charge a "set use" fee.[12] Coin Phone Management offered four arguments why the Commission should not require Coin Phone Management's "set use" fee to be revenue neutral. First, BellSouth's "set use" fee will not be revenue neutral to the end-users of

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10 T.E. at 29.

11 T.E. at 23 - 24.

12 T.E. at 33 - 35.

BellSouth's pay telephones since the revenue reductions will be realized through toll and access charges that are not necessarily charges paid by those users. Second, Coin Phone Management's rates are capped at the level of the local exchange carrier; therefore, it would appear arbitrary to allow the LEC to recover a $.25 "set use" fee representing the value of the accessibility of the pay telephone to the end-user while not allowing Coin Phone Management the same recovery for providing the same value to the end-user. Third, the revenue neutrality reflected in the BellSouth "set use" fee order is not mandated by the establishment of a "set use" fee, but rather as a result of the regulation under which BellSouth operates. Finally, Coin Phone Management is not subject to either rate of return or price cap regulation. The "set use" fee proposed by Coin Phone Management is consistent with its regulatory requirements which generally require only that Coin Phone Management's rates not exceed the rates of the LECs.[13]

Other Issues

Coin Phone Management provided additional arguments in support of its proposed tariff. The IPPs provide a service to users by providing the caller with access to the telecommunications network. Absent the "set use" fee, no compensation is received by the owner of that payphone in the case of non-sent paid calls. Also, the "set use" fees will help IPP providers maintain a competitive standing by enabling them to continue providing service innovations, state-of-the-art equipment, and improved payphone service to underserved areas. California and Florida have authorized IPPs to implement "set use" fees.

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[13] Brief of Coin Phone Management, pages 11-14.

CONCLUSION

The Commission, having reviewed the evidence of record and being otherwise sufficiently advised, finds that the proposed tariff is reasonable and should be approved for calls made from Coin Phone Management's payphones located in BellSouth territory that are carried and billed by BellSouth. However, the Commission puts Coin Phone Management on notice that, pursuant to the outcome of the FCC's proceedings in CC Docket No. 96-128, additional tariff revisions may be necessary.

IT IS THEREFORE ORDERED that:

1. Coin Phone Management's Set Use Fee is approved for local and intraLATA calls made from Coin Phone Management payphones in BellSouth's territory that are carried and billed by BellSouth, subject to the outcome of the FCC proceedings, CC Docket No. 96-128.

2. Within 30 days from the date of this Order, Coin Phone Management shall file tariff sheets reflecting the Set Use Fee.

Done at Frankfort, Kentucky, this 2nd day of August, 1996.

PUBLIC SERVICE COMMISSION

Linda K Breathitt
Chairman

Vice Chairman

ATTEST:

Robert M. Davis
Commissioner

Don Mills
Executive Director